DEPARTMENT OF STATE REVENUE

01-20160464.LOF

Letter of Findings: 01-20160464
Indiana Individual Income Tax
For The Tax Year 2011

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Individuals were not required to file a joint Indiana individual income tax return for 2011 because they were not Indiana residents.

ISSUE

I. Indiana Individual Income Tax - Residency - Domicile.

Authority: IC § 6-3-1-12; IC § 6-3-1-13; IC § 6-3-2-1; IC § 6-8.1-5-1; Lafayette Square Amoco, Inc. v. Ind. Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Ind. Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Scopelite v. Ind. Dep't of Local Gov't Fin., 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Wendt LLP v. Ind. Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012); Dep't of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579, 583 (Ind. 2014); Croop v. Walton, 157 N.E. 275 (Ind. 1927); State Election Bd. v. Bayh, 521 N.E.2d 1313 (Ind. 1988); In the Matter of Evrard, 333 N.E.2d 765 (Ind. 1975); 45 IAC 3.1-1-21; 45 IAC 3.1-1-22.

Taxpayers protest the Department's proposed assessment for the 2011 tax year.

STATEMENT OF FACTS

Taxpayers are a married couple currently residing in Florida. They lived in Ohio from 2000 until 2014, but own a vacation home in Indiana. The Indiana Department of Revenue ("Department") determined that Taxpayers were Indiana residents for the tax years 2011 and 2012, and that Taxpayers failed to file their 2011 and 2012 joint Indiana income tax return. The Department, therefore, issued a proposed assessment for 2011 and 2012 for income tax, penalty, and interest. Taxpayers filed Form IT-40PNR for both 2011 and 2012, reporting zero Indiana taxable income for 2011 and a small amount of Indiana source income for 2012. The Department accepted the 2012 return as filed and issued Taxpayers a refund, but adjusted the 2011 return and assessed Taxpayers additional tax for 2011. Thus, the only outstanding issue for this protest is the assessment for the 2011 tax year.

Taxpayers timely protested the proposed assessment. An administrative phone hearing was held. This Letter of Findings ensues and addresses Taxpayers' protest of the proposed assessments for the tax years 2011. Additional facts will be provided as necessary.

I. Indiana Individual Income Tax - Residency - Domicile.

DISCUSSION

The Department assessed Taxpayers income tax for the 2011 tax year on the grounds that Taxpayers were Indiana residents and that they failed to file joint Indiana income tax returns. Specifically, the Department determined that Taxpayers were residents based on the filing of the homestead exemption on their Indiana real property. Taxpayers contend that they should not have been assessed Indiana income tax because they were not Indiana residents in 2011, and that they took steps to remove the Indiana homestead exemption from their Indiana property prior to the Department's income tax assessments. The issue is whether, for the tax year 2011, Taxpayers were Indiana residents and were therefore subject to Indiana income tax.

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Lafayette

Square Amoco, Inc. v. Ind. Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); Ind. Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012). Thus, the taxpayer is required to provide documentation explaining and supporting his challenge that the Department's assessment is wrong. Poorly developed and non-cogent arguments are subject to waiver. Scopelite v. Ind. Dep't of Local Gov't Fin., 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); Wendt LLP v. Ind. Dep't of State Revenue, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). In reviewing a taxpayer's argument, the Indiana Supreme Court has held that when it examines a statute that an agency is "charged with enforcing . . . we defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party." Dep't of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579, 583 (Ind. 2014).

Indiana imposes a tax "upon the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person." IC § 6-3-2-1(a). For income tax purposes, "The term 'resident' includes (a) any individual who was domiciled in this state during the taxable year, or (b) any individual who maintains a permanent place of residence in this state and spends more than one hundred eighty-three (183) days of the taxable year within this state . . . ." IC § 6-3-1-12; see also 45 IAC 3.1-1-21. A nonresident is "any person who is not a resident of Indiana." IC § 6-3-1-13.

To establish a domicile, a taxpayer "must be physically present at a place, and must have the simultaneous intent of establishing a home at that place." 45 IAC 3.1-1-22. For income tax purposes, "a person has only one domicile at a given time even though that person maintains more than one residence at that time." Id. Additionally, "[o]nce a domicile has been established, it remains until the conditions necessary for a change of domicile occur." Id. "To effect a change of domicile, there must be an abandonment of the first domicile with an intention not to return to it, and there must be a new domicile acquired by residence elsewhere with an intention of residing there permanently, or at least indefinitely." Croop v. Walton, 157 N.E. 275, 278 (Ind. 1927).

In State Election Bd. v. Bayh, 521 N.E.2d 1313 (Ind. 1988), the Indiana Supreme Court considered the standard by which "domicile" –and thus residency– is established. The court determined that Mr. Bayh met the residency requirement for the office of Governor because Mr. Bayh's domicile remained in Indiana even though he moved to different states for various reasons for many years. Specifically, the court explained, in relevant part:

> Once acquired, domicile is presumed to continue because every man has a residence somewhere, and . . . he does not lose the one until he has gained one in another place. Establishing a new residence or domicile terminates the former domicile. A change of domicile requires an actual moving with an intent to go to a given place and remain there. It must be an intention coupled with acts evidencing that intention to make the new domicile a home in fact . . . . [T]here must be the intention to abandon the old domicile; the intention to acquire a new one; and residence in the new place in order to accomplish a change of domicile. A person who leaves his place of residence temporarily, but with the intention of returning, has not lost his original residence.

Id. at 1317 (internal quotations and citations omitted). The Indiana Supreme Court went on to conclude that:

> Residency requires a definite intention and "evidence of acts undertaken in furtherance of the requisite intent, which makes the intent manifest and believable." A self-serving statement of intent is not sufficient to find that a new residence has been established. Intent and conduct must converge to establish a new domicile.

Id. at 1318 (Internal citations omitted); see also In the Matter of Evrard, 333 N.E.2d 765, 768 (Ind. 1975) ("The person must show . . . evidence of acts undertaken in furtherance of the requisite intent, which make that intent manifest and believable.")

Additionally, 45 IAC 3.1-1-22 considers the following relevant facts in determining whether a new domicile has been established:

(1) Purchasing or renting residential property
(2) Registering to vote
(3) Seeking elective office
(4) Filing a resident state income tax return or complying with the homestead laws of a state
(5) Receiving public assistance
(6) Titling and registering a motor vehicle
(7) Preparing a new last will and testament which includes the state of domicile.

These factors are not exclusive in determining an individual's intent to relocate. "The determination of a person's intent in relocating is necessarily a subjective one. There is no one set of standards that will accurately indicate the person's intent in every relocation. The determination must be made on the facts present in each individual case." Id.

The Department based its determination that Taxpayers were Indiana residents on public records showing that Taxpayers had claimed a homestead exemption on their Indiana real property. Taxpayers submitted a letter from the county auditor's office, dated February 2014, indicating that they were not eligible for the homestead exemption because they listed their Ohio driver's license numbers on the verification form, evidencing that they were Ohio residents. In addition, Taxpayers requested that the homestead exemption be removed for the 2011 and 2012 tax years, and provided copies of their revised 2016 property tax statements showing that Taxpayers paid back this benefit. Taxpayers' documentation shows that the homestead exemption was placed on their Indiana real property in error, and Taxpayers took active steps to correct this error. Thus, the homestead exemption is not indicative of Taxpayers' intent to make Indiana their domicile.

Taxpayers also submitted additional documentation showing that they were domiciled in Ohio during the tax years at issue. Taxpayers provided their 2011 and 2012 Federal and Ohio tax returns listing their Ohio address; Ohio voter registrations and voting records dating back to 2000; and Ohio driver's license applications for 2007, 2008, and 2011. Department records also show that Taxpayers had vehicles registered in Ohio in 2006 and 2011, as well as active Ohio driver's licenses dating back to 2000. Taxpayers stated that they spend the summer months at their Indiana property, which is well below the 183 day threshold for finding that they were Indiana residents based upon time spent in the state.

In this case, Taxpayers provided credible documentation sufficient to establish their intent to make Ohio their domicile during the relevant tax years. Consideration of the factors outlined in 45 IAC 3.1-1-22 and the documentation provided by Taxpayers support a finding that Taxpayers were not Indiana residents in 2011 and 2012. Taxpayers have shown that they made diligent efforts to remove the homestead exemption from their Indiana property. Therefore, Taxpayers proved the proposed assessment to be incorrect as required by IC § 6-8.1-5-1(c), and they are not subject to Indiana income tax for the tax year 2011 because they were nonresidents.

Residency cases are particularly fact sensitive, thus the position relayed within this document pertains only to this case and its specific set of facts.

FINDING

Taxpayers' protest is sustained.

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An html version of this document.